IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.382 OF 2005

Nutan Warehousing Co.Pvt Ltd, .. Petitioner
Vs
Indian Bank and Ors. .. Respondents.

Mr Niranjan Mundargi, senior counsel, for the petitioner.
Mrs M.H.Mhatre, APP for the respondent-State.
Mrs Mohan Nair for respondent nos 1 and 2.

CORAM : D.B.BHOSALE, J.

DATED : 25th July, 2006

P.C.:

1. Heard Mr Mundargi, learned senior counsel, for the petitioner, Mrs Mhatre, learned APP, for the respondent-State and Mrs Nair, learned counsel for respondent nos 1 and 2.

2. This writ petition is directed against the judgment and order dated 27.6.2004 rendered by the learned 8th Addl.District Judge, Pune, by which the petition filed by respondent nos 1 and 2 has been allowed and the process issued by the learned Magistrate on the complaint filed by the petitioner under section 29 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the Act") read with section 34 and 120-B of IPC has been quashed. A challenge to the impugned order is solely on the ground that respondent nos 1 and 2 had filed a

civil suit and pending that suit they issued a notice under section 13(2) of the said Act and, thereby, committed an offence under section 29 of the Act. According to Mr Mundargi, learned counsel for the petitioner, issuance of notice under section 13(2) during pendency of the civil suit (Special Civil Suit No.976/95) in the Court of the learned Civil Judge, Senior Division, Pune, in contravention of the provisions contained in Section 13(1), constitutes an offence under section 29 of the Act.

3. I perused the provisions of Section 13 as also of Section 29 of the said Act. Sub-section (1) of Section 13 provides that notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, **without the intervention of the court or tribunal**, **by such creditor in accordance with the** provisions of that Act. Admittedly, the suit in the present case was filed in 1995 whereas the Act came into force on 21.6.2002. A careful reading of sub-section (1) of section 13, in my opinion, shows that the secured creditor can invoke the said provisions and may enforce any security interest created in favour of such secured creditor in accordance with the provisions of the said Act. I do

not see any contravention, as tried to be contended. There is no bar in invoking the provisions of Section 13, merely because the old suit is pending before the Court. This power is conferred in addition to the other remedies, if any, available in law and, therefore, it cannot be said that the notice issued under section 13(2) was in contravention of sub-section (1) of section 13. I find no merit in the aforesaid contention. The writ petition is accordingly dismissed.

(D.B.BHOSALE,J.)